



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
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July 26, 2002

John Shortsleeve, Esq.
70 Bailey Road
Haverhill, MA 01830

Amy G. Rabinowitz, Esq.
Massachusetts Electric Company
25 Research Drive
Westborough, MA 01582

Re: Petition of Town of Foxborough, D.T.E. 02-30

Dear Mr. Shortsleeve and Ms. Rabinowitz:

On April 25, 2002, the Town of Foxborough ("Foxborough" or "Town"), pursuant to G.L. c. 164, § 34A, submitted a request for resolution of a dispute ("Petition") with Massachusetts Electric Company ("MECo" or "Company") regarding switching from Rate S-2, the tariff under which it presently receives service, to Rate S-5.¹ Foxborough also requested, pursuant to 220 C.M.R. § 2.08, that the Department issue an advisory opinion on the method for determining the costs for the possibility of turning off some Company-owned streetlights.

Specifically, on November 1, 2001, the Town, pursuant to G.L. c. 164, § 34A, notified MECo that it intended to switch service for all of the Town-owned streetlights from Rate S-2 to Rate S-5 ("Conversion Notice") (Petition at A2-A3). The Conversion Notice also indicated that the Town was "considering converting" the tariff under which it receives service for the

¹ The Department is required to resolve any dispute concerning any matter arising in connection with the exercise by any municipality of its option to "acquire, or compensate the electric company for, the lighting equipment of the electric company in the municipality" G.L. c. 164, § 34A. In 1999, MECo first established Rate S-5 for Company-owned streetlights that were later purchased by municipalities pursuant to G.L. c. 164, § 34A. Massachusetts Electric Company, D.T.E. 98-69 (1999).

Company-owned streetlights, Rate S-1, to Rate S-5 (*id.*).² Foxborough requested that the Department resolve certain disputes under G.L. c 164, § 34 A.

In addition to the Conversion Notice, on February 7, 2002, Foxborough informed MECo that it was “considering turning off certain MECo-owned streetlights” and requested certain pricing information (Petition at A 13-14). Related to this letter, Foxborough requested the Department to issue advisory rulings on the potential issues related to turning off the lights.

On May 8, 2002, MECo filed a Motion to Dismiss the Foxborough Petition (“Motion”). MECo argues that G.L. c. 164, § 34A limits the streetlight dispute resolution process to “lighting equipment owned by the electric company” and does not include the lighting equipment owned by Foxborough (Motion at 4-6). MECo also argues that the Department should dismiss the Town’s request for an advisory opinion because Foxborough did not exercise its option to purchase MECo’s streetlights (Motion at 6-7). On May 16, 2002, Foxborough filed a response to the Motion requesting that the Department deny the Motion (“Town Response”). Foxborough argues that the Company has no standing to file the Motion because only a “party to an adjudicatory proceeding” may file a motion to dismiss (Town Response at 1-2).

Department regulations state that a “party” to a Department proceeding is any person who “by any provision of the General Laws is entitled to participate fully in such proceeding and who enters an appearance” 220 C.M.R. § 1.03(2)(b) (emphasis added). Foxborough and MECo are both entitled to participate fully in a G. L. c. 164, § 34A dispute resolution proceeding concerning the purchase of streetlights in MECo service territory. Foxborough raised a § 34A issue in its Conversion Notice, and MECo is entitled to respond. Therefore, MECo and Foxborough are parties because they are entitled to participate in a 34A proceeding. Accordingly, for the purpose of filing a motion in a § 34A proceeding, we conclude that MECo has standing to move to dismiss this case.³ Under 220 C.M.R. § 1.03(2)(b), the proceeding need not be an adjudicatory proceeding to enable a party to file a motion to dismiss. We next summarize the facts and rule on the Motion.

² MECo estimates that it provides service to 736 Foxborough-owned streetlights under Rate S-2, and 338 MECo-owned streetlights under Rate S-1 (Affidavit of Joan Wooding at 1)

³ Moreover, MECo is an electric company subject to the regulatory authority of the Department even when G.L. c. 164, § 34A may not be applicable. G.L. c. 164; G.L. c. 25.

In 1991, the Town agreed to take streetlighting service under Rate S-2 for customer-owned streetlights (Foxborough Petition at B-6 through 12). On November 1, 2001, the Town, pursuant to G.L. c. 164, § 34A(a)(i), notified MECo that it intended to convert “all [Town owned] S-2 streetlights to the alternative tariff authorized by M.G..L. c. 164, § 34A(a)(I) [Rate S-5]” (*id.* at A-2). The Rate S-5 is available

to any municipal Customer that has purchased the Company’s streetlighting equipment pursuant to the Company’s Rate S-2 . . . provided that the Customer has complied with all provisions and terms of the rates and any related service agreements . . .

(*id.* at B-2, citing M.D.T.E. No. 1027 (MECo’s S-5 Tariff) (emphasis added). The Rate S-2 Service Agreement for Foxborough’s town-owned streetlights provides that if the Town intends to terminate Rate S-2, it must give written notice “six (6) months prior to the date on which the Agreement would otherwise be automatically extended (*i.e.* July 1 each year)” (*id.* at B-7, citing Rate S-2 Service Agreement).

G.L. c. 164, § 34A(a) applies to a “municipality taking service from an electric company pursuant to a tariff which provides for the use . . . of lighting equipment owned by the electric company.” A municipality “subject to the provisions of [§ 34A]” may “convert its street lighting service from the subject tariff to an alternative tariff approved by the department” G.L. c. 164, § 34A(a)(i) (emphasis added).

Rate S-2 applies to the use of lighting equipment owned by Foxborough and not the Company (Petition at B-4). As noted, § 34A applies only to lighting equipment owned by the Company. Thus, § 34A does not apply to the Town’s proposal to convert the rate for its own streetlights from Rate S-2 to Rate S-5. The 60 day notice requirement of G.L. c. 164, § 34A does not apply to the Town’s proposal to convert the rate for its own streetlights from Rate S-2 to Rate S-5 (Foxborough Petition at 4). Rather, the terms of Rate S-2 control and, in order to terminate service under Rate S-2, Foxborough must give MECo a six-month notice prior to July 1 of each calendar year. Based upon the facts the Town has presented, we conclude that Foxborough is entitled to no relief to its claims raised in its Conversion Notice. Accordingly, we grant MECo’s Motion to dismiss the issues raised in the Conversion Notice.⁴

Finally, we address the Town’s request for an advisory opinion concerning certain issues

⁴ We note that the Company submitted an affidavit responding to Foxborough’s allegation that the Company was slow in responding to the Town’s request for a purchase price for Company-owned streetlights in the Conversion Notice (Affidavit of June Wooding at 1-2). The Company indicated that it is “ready, willing and able to present a purchase price to the Town” (*id.* at 2). Thus, this issue is moot. Electric companies shall provide purchase prices for municipal streetlights in a timely manner.

related to the Town's "considering" the cost of turning off some Company-owned streetlights. Ordinarily, the Department declines to issue advisory opinions and prefers to construe its statutes and regulations in specific factual settings. Town of Stow, D.P.U. 93-124-B at 1 (1994). We conclude that an advisory opinion is not necessary in this case because the Company has agreed to provide Foxborough the "unamortized plant values" the Town requested (Petition at A-16; Wooding Affidavit at 1-2). It is premature for the Department to address an issue before the Company and the City have met and attempted to resolve the issues.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

cc: Mary Cottrell